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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1989

Addendum

AFGHANISTAN*

[25 October 1991]

Second periodic report of the Republic of Afghanistan on the realization of the rights contained in parts I, II and III of the International Covenant on Civil and Political Rights

Introduction

1. The Constitution of the Republic of Afghanistan, by observing the amendment adopted by the Grand Assembly in 1990 and other legislation concerning the welfare and prosperity of the people of Afghanistan, by taking into consideration the changes taking place in our country and in the contemporary world, by following the principles of the sacred religion of Islam and by observing the befitting historical and cultural traditions of Afghans, by respecting the heritage of the constitutional movement, and in conformity with the Charter of the United Nations and the Universal Declaration of Human Rights, is a guarantor of the rights and freedoms of the citizens of

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* For the initial report submitted by the Government of Afghanistan, see CCPR/C/31/Add.1; for its consideration by the Committee, see CCPR/C/SR.603, SR.604 and SR.608 and Official Records of the General Assembly, Thirty-eighth session, Supplement No. 40 (A/40/40), paras. 581-627.

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Afghanistan in their civil and political aspects, those rights being observed not to be in conflict with the interests of the country and individuals or with the Universal Declaration of Human Rights.

Article 1

2. The Constitution of the Republic of Afghanistan, in conformity with article 1 of the International Covenant on Civil and Political Rights, states:

> "National sovereignty in the Republic of Afghanistan belongs to the people. The people exercise national sovereignty through the Loya Jirgah and National Assembly".

3. Likewise, article 13 of the Constitution stipulates:

> "The State shall follow the policy of all-round growth, understanding, friendship and cooperation between all nationalities, clans and tribes of the country for ensuring political, economic, social and cultural equality and rapid growth and development of regions which are socially, economically and culturally backward."

4. In the Republic of Afghanistan, in accordance with article 20, item 1 of the Constitution, mineral resources, forests, pastures, mines, basic energy resources, historic relics, banks, insurance institutions, radio-television and communication facilities, major dams, ports and transport ways are the property of the State. Nevertheless, under item 2 of the same article, private investment is allowed, in accordance with the law, for making use of forests, pastures, energy resources, mines and the purchase and sale of means of communication.

Articles 2 to 5

5. In accordance with article 38 of the Constitution, citizens of the Republic of Afghanistan, both men and women, have equal rights and duties in the eyes of the law, irrespective of their national, racial, linguistic, tribal, educational and social status, religious creed, political conviction, occupation, kinship, wealth and residence. Designation of any illegal privilege and discrimination against rights and duties of citizens are forbidden.

6. Likewise, article 6 of the Law on the Organization and Authority of the Courts provides that men and women possess equal rights and obligations. In addition, the basic human rights which are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights have been reflected in articles 33 to 63 of the Constitution. Article 64 of the Constitution provides as follows:

> "The State shall provide the necessary conditions for citizens to exercise their fundamental rights and liberties and discharge their duties. No person has the right to exercise the rights and liberties enshrined in the law against the public interest and to the detriment of the rights and liberties of other citizens".

7. Article 51 of the Constitution stipulates that if the rights and liberties of citizens are impaired they shall enjoy the right to petition, criticize and make suggestions, either individually or collectively. State organs, social organizations and responsible officials are bound to consider those petitions, criticisms and proposals and take necessary action in regard to them within the time prescribed by law. Surveillance for criticism is forbidden.

8. Article 46 of the Constitution provides that citizens of the Republic of Afghanistan who suffer in the performance of their duties unlawful damage by state organs, social organizations or responsible officials are entitled to compensation. A person who uses his rights against the public good or to the detriment of the rights and liberties of other citizens shall be prosecuted on the basis of provisions of the Law on Criminal Procedures, and, in accordance with the Penal Code and other legislation, shall be punished by the courts, but shall have the right of defence and other rights.

9. Article 41 of the Constitution stipulates:

> "Liberty is the natural right of every human being. This right is unlimited, except in so far as it harms the freedom of others and public interests as defined by law. Liberty and human dignity are inviolable and the State respects and protects them. Innocence is the original state and the accused is presumed innocent unless found guilty by a final verdict of a court of law. No act is considered a crime, except as prescribed by law. No person shall be accused of committing a crime unless in accordance with the provisions of the law. No person can be arrested or detained except in accordance with the law. No person can be punished unless by a verdict of a court in accordance with the provisions of the law and in proportion to the crime committed. Crime is a personal deed; no other person shall be punished for its commission. The accused has the right to defend himself personally or through an advocate."

10. With respect to the provisions of article 5 of the International Covenant on Civil and Political Rights, the Republic of Afghanistan will never impose restrictions on the rights and freedoms of the people, nor enact legislation running counter to the provisions of the Covenant. If provisions of national legislation conflict with those of the Covenant, the Covenant shall have preference.

Article 6

11. Article 39 of the Constitution of the Republic of Afghanistan states that "the right to life is the natural right of every human being. No person shall be deprived of this right unless by law". Punishments for crimes are in full accord with the principles of the Covenant on Civil and Political Rights. Those principles are reflected in chapter three of the Constitution, under article 41 of which no person can be punished unless by a verdict of a court, in accordance with the provisions of the law and in proportion to the crime committed. In accordance with article 115 of the Constitution the final verdict of the court is binding except in the case of a death sentence (see para. 42 below), which is carried out after approval by the President of the Republic. The President, in accordance with article 75, item 8 of the

Constitution, enjoys the right to pardon and remit the sentence. Article 413 of the Criminal Law Procedures provides that if a pregnant woman is sentenced to death, the application of her sentence shall be postponed until two months after the birth. The pardon or commutation of the death sentence referred to in article 6 of the International Covenant on Civil and Political Rights has been reflected in articles 170 and 171 of the Penal Code. General amnesty is provided for in the law; private individual pardon is granted by presidential decree. Every year some decrees of pardon are issued by the President. In accordance with article 6, paragraph 5 of the Covenant, the implementation of the death sentence under article 93 of the Penal Code is not permissible in the case of a person who has not reached the legal age of majority.

Article 7

12. In the Republic of Afghanistan, punishment incompatible with human dignity, and torture are prohibited. Obtaining a confession, testimony or statement from an accused person or any other person by compulsion or threat is prohibited. In accordance with article 42 of the Constitution and article 78 of the Law on Criminal Procedures, statements or testimony taken from an accused person or other person by means of compulsion shall not be valid. A public servant who tortures an accused person or any other person to obtain a statement, testimony or confession, or who issues orders for torture, shall be punished in accordance with the law. Acting on the orders of superiors in the commission of unlawful deeds cannot be the ground for a plea of innocence (art. 42 of the Constitution). In accordance with the provisions of articles 276 and 275 of the Penal Code, a person who carries out acts of torture, compulsion or threat shall be punished. Therefore, in conformity with article 7 of the Covenant, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Articles 8 to 10

13. The provisions of article 8 of the Convention prohibiting slavery and forced labour have been reflected in the Constitution and other legislative documents of the Republic of Afghanistan. The sacred religion of Islam similarly forbids them.

14. Article 41 of the Constitution states that liberty is the natural right of every human being. This right is unlimited except in so far as it harms the freedom of others and public interests as defined by law. Therefore, in conformity with articles 8 to 10 of the Convention, everybody has the right to live, and to enjoy freedom and private security, and nobody can be held in slavery.

15. Article 53 of the Constitution forbids the imposition of forced labour. The performance of compulsory labour in time of war, natural calamity and in other states of emergency which threaten public life and order is excluded from this provision. The right to work, even in prison, is established in article 8 of the Labour Law Code.

16. Article 41, item 2 of the Constitution states that "liberty and human dignity are inviolable and the State respects and protects them". Based on this principle, article 1 of the Law on the Detection and Investigation of the Crimes and the Supervision of Prosecutors in the Implementation of the Law provides as follows:

> "The arrest of a suspected person is not allowed, except in certain cases envisaged by law".

In accordance with the Penal Code, the prosecutor is duty-bound to carry out the investigation of the crime within a specific time limit. In accordance with article 132 of the Law on Criminal Procedures, the prosecutor is obliged, after the termination of investigation, to bring the case to the courts.

17. In connection with the law in force in the country, it should be pointed out that the circumstances mentioned above are in conformity with the objectives of the International Covenant on Civil and Political Rights. For instance, pursuant to article 46 of the Law on the Detection and Investigation of Crimes and the Supervision of Prosecutors in the Implementation of the Law, the attorney is obliged to assess the complaint within three days and to convey the outcome to the plaintiff. Likewise, article 95 of the Law on Criminal Procedures gives the right to detainees to complain in written or oral form to the prison or court employees and to ask for the complaint to be referred to the prosecutor in charge of his case.

18. The provisions of article 9 of the Covenant have been enshrined in detail in the Constitution and in the laws of the Republic of Afghanistan. For example, article 41 of the Constitution states that:

> "Liberty and human dignity are inviolable and the State respects and protects them. Innocence is the original state and the accused is presumed innocent unless found guilty by a final verdict of a court of law. Crime is a personal deed; no other person shall be punished for its commission".

Articles 2, 3 and 4 of the Penal Code contain detailed provisions in this regard. And article 46 of the Constitution provides that citizens who in the performance of their duties suffer unlawful damage by State organs, social organizations and responsible officials are entitled to compensation.

19. Taking into consideration the provisions of the Constitution and in accordance with the rules enshrined in article 10 of the Convention, the methods of applying punishment are set out in a special law (the Law to Effect Imprisonment in the Prisons), on the basis of which and other rules, the detention of adults shall take place in prisons. Their right to work, their reformation and rehabilitation shall be taken into consideration. Accused or convicted juveniles shall be separated from adults and shall be placed in penitentiary centres, the essential aim of which is to reform and socially rehabilitate juvenile offenders. They shall also be enabled to become literate and to learn a profession and thus to become good individuals for their society. Based on the provisions enshrined in the Constitution and the law relating to the passing of prison sentences, the human dignity of accused

and convicted persons is respected during detention and imprisonment. Accused persons are segregated from convicted persons and are kept initially in houses of custody and later at detention centres. When they are sentenced by a court and the verdict of the court against them becomes final they are transferred to prison.

Article 11

20. Article 43 of the Constitution states that "indebtedness cannot be the cause for deprivation of a person's liberty. The ways and means of recovering debts shall be regulated by law". In view of the above provision and in conformity with article 11 of the Convention, no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Articles 12 and 13

21. The provisions of article 12 of the Convention are applicable in the Republic of Afghanistan. The law of the Republic of Afghanistan takes this into consideration and has taken into consideration the possibilities for travel of the citizens of the Republic of Afghanistan. Article 60 of the Constitution provides that: "Citizens of the Republic of Afghanistan enjoy according to law the right to travel abroad and return home". As regards the free choice of residence, article 59 of the Constitution specifies that:

> "Citizens of the Republic of Afghanistan have the right to travel and free choice of settlement and residence in the country. The State is authorized to ban temporarily travel, settlement and residence in particular areas of the country for the purposes of maintaining security and public order, prevention of epidemic diseases, and protection of the rights and liberties of individuals".

22. The provisions of article 13 of the Convention are applicable in the Republic of Afghanistan. Article 37 of the Constitution states:

> "The law of the Republic of Afghanistan guarantees, according to the law, the rights and freedoms of foreign citizens and individuals residing in Afghanistan without citizenship. They are bound to obey the Constitution and other laws of the Republic of Afghanistan".

During their stay in Afghanistan, they are subject to the laws of Afghanistan. They can lodge their protests and complaints, whenever they want, with the courts and the Attorney-General's office. The laws of the Republic of Afghanistan do not include the principle that a foreign citizen cannot present his complaints and protests to the Attorney-General and the courts. Foreign citizens residing in Afghanistan are treated like Afghan citizens. For example, article 11 of the Penal Code provides that persons who do not have the citizenship of Afghanistan but reside in Afghanistan shall be treated as Afghan citizens unless otherwise stipulated by law.

Article 14

23. The provisions of article 14 of the Convention have been included in articles 38 and 41 of the Constitution, articles 2, 3 and 4 of the Penal Code, articles 12 and 13 of the Law on the Organization and Authority of the Courts and articles 79 to 81 of the amendment to the Law on Criminal Procedures, particularly in connection with the fact that innocence is the original state and the accused is presumed innocent unless found guilty, and with the right of the accused to defend himself personally or through an advocate. Provision has been made for the use of a translator in the court for persons who do not know the official languages of Afghanistan, and for the non-trial of the accused in cases where he has already been tried for the same offence.

24. In accordance with article 113 of the Constitution and the provisions of other laws, trials in the courts of the Republic of Afghanistan shall be held openly. As article 41 of the Constitution and article 6 of the Law on the Organization and Authority of the Courts stipulate, the accused enjoys the right to defend himself. The latter law provides:

(a) The accused enjoys the right to defend himself personally or through his advocate;

(b) In order to defend the accused or other persons who do not have an advocate or are not able to employ an advocate, a commission for legal assistance shall be formed in the Supreme Court.

25. In accordance with article 114 of the Constitution, trial and judgement by the courts shall be conducted in the Pashtu and Dari languages or in the language of the majority of the residents of the place. If a party to the case does not understand the language in which the trial is conducted, he has the right to become acquainted with the materials and documents of the case through an interpreter and the right to address the court in his mother tongue. In accordance with article 42 of the Constitution, obtaining confession, testimony or statement from an accused or other person by compulsion or threat is prohibited. Statements or testimony taken from an accused or other person by means of compulsion shall not be valid. Citizens of the Republic of Afghanistan who suffer, in the performance of their duties, unlawful damage by State organs, social organizations and responsible officials are entitled to compensation (art. 46 of the Constitution).

Article 15

26. The provisions of article 15 of the Convention, in accordance with which no one shall be held guilty of any criminal act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, have been reflected in article 41 of the Constitution (see para. 9 above) and in articles 21 and 22 of the Penal Code.

Article 16

27. Article 133 of the Constitution specifies that the Republic of Afghanistan respects and observes the Charter of the United Nations, the Universal Declaration on Human Rights and other accepted principles and norms of international law. The provisions of article 16 of the Convention whereby everyone shall have the right to recognition everywhere as a person before the law is therefore respected, and, by taking into consideration the values enshrined in the Constitution and other legislative documents, everybody's legal personality is respected.

Article 17

28. The provisions of article 17 of the Convention stating that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation have been reflected in articles 44 and 45 of the Constitution. Articles 41, 44 and 45 of the Constitution, which are in conformity with the spirit of article 17 of the Convention prevent arbitrary and unlawful interference prejudicing the honour of a person. For example, article 44 of the Constitution guarantees the inviolability of a person's residence. No person, including a State representative, can enter or search a residence without the permission of the resident and except in the circumstances and under the procedures prescribed by law. Likewise, article 45 of the Constitution guarantees the confidentiality of correspondence, telephone conversations and telegram and other communications. No one, including a State representative, shall intercept telephone conversations, telegraphic communications or other communications except in accordance with the provisions of the law.

Articles 18 and 19

29. The provisions of articles 18 and 19 of the Covenant, which encompass freedom of thought, the right to hold opinions without interference, and freedom of expression, conscience and religion, have been taken into consideration in articles 40 and 49 of the Constitution and in the Law on the Press. In cases where these freedoms are encroached upon, punishment of the offenders has been provided for in the Penal Code.

30. In accordance with article 40 of the Constitution, in the Republic of Afghanistan the freedom to perform religious rights is guaranteed to all Muslims. Followers of other religions are free to perform their religious rights. No individual has the right to abuse religion for anti-national and anti-people propaganda purposes, for the creation of enmity or the commission of other deeds contrary to the interests of the Republic of Afghanistan.

31. In accordance with article 49 of the Constitution, citizens of the Republic of Afghanistan enjoy the right to freedom of thought and expression. Citizens can exercise this right openly, in speech and in writing, in accordance with the provisions of the law. Precensorship of the press is not allowed.

Article 20

32. The provision of article 20 of the Covenant that any propaganda for war shall be prohibited by law is reflected in article 138 of the Constitution, which provides that war propaganda is forbidden in the Republic of Afghanistan.

Articles 21 and 22

33. The provisions of article 21 of the Covenant, which recognizes the right of peaceful assembly, have been envisaged in articles 7 and 50 of the Constitution and in the law on forming social organizations. Under article 50 of the Constitution, citizens have the right to assembly, peaceful demonstration and strike, in accordance with the provisions of the law. Article 7 of the Constitution provides that the formation of social organizations is allowed in the Republic of Afghanistan in accordance with the law. Thus, in conformity with article 22 of the Covenant, everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Article 22 of the Convention regarding the formation of trade unions is thus applied in the Republic of Afghanistan and trade unions have been formed in practically all offices and institutions. Article 22 of the Constitution provides that the State shall encourage and protect the activity of individual craftsmen and their voluntary participation in trade unions and cooperatives.

Articles 23 and 24

34. Article 23 of the Convention, regarding the family and the right to marry and to form a family has been reflected in detail in the Constitution and the Civil Law of the Republic of Afghanistan. Article 15 of the Constitution provides:

> "In the Republic of Afghanistan the family constitutes the basic unit of society. The State shall adopt the necessary measures to ensure the health of mother and child and for the upbringing of children".

In accordance with article 16 of the Constitution, the State

> "takes permanent care of the young generation and provides necessary opportunities for their education, employment, recreation, rest, spiritual and physical growth, and shall help the blossoming of the talents of youth".

35. In accordance with the provisions of article 60 of the Civil Law, marriage is a contract which legitimizes the association of men and women for the founding of a family and creates rights and obligations for the parties. Prior to marriage, courting takes place and the parties to the marriage become engaged. Article 64 of the Civil Law provides that an engagement is a promise to marry and each one of the sides can dissolve it. Marriage takes place according to the Shariah of Islam; the equality of the parties and their consent in the presence of a witness is essential.

36. In accordance with the legislation of the Republic of Afghanistan, marriage without the free and full consent of the intending spouses is invalid. In addition, being of marriageable age and the full consent of the intending spouses are among the prerequisites for a marriage contract which are explicitly specified in articles 66 and 70 of the Civil Law. The provisions of the International Covenant on Civil and Political Rights and articles 59, 60, 111 and 113 of the Constitution of the Republic of Afghanistan, articles 6 and 7 of the Law on the Organization and Authority of the courts and article 218 of the Law on Criminal Procedures provide for the right to justice, protection of the family, consolidation of family relations and the ensuring of children's rights. Likewise, the Civil Law, based on the following principles of Islam, fulfils the objectives of the Covenant. Every child enjoys the right to the measures of protection and the acquisition of citizenship which are provided for in article 24 of the Covenant and are reflected in articles 15 and 33 of the Constitution and other legislative documents of the Republic of Afghanistan. In order to protect children, an organization concerned with mother and child care has been formed. In accordance with the provisions of article 33 of the Constitution citizenship of the Republic of Afghanistan is equal and uniform. This means that citizenship does not depend on age or race and all persons enjoy citizenship in a uniform manner.

Articles 25 to 27

37. Participation in the administration of state affairs and in elections, which is provided for in article 25 of the Convention, is reflected in articles 47 and 48 of the Constitution and is implemented in practice. Article 1 of the Constitution specifies that national sovereignty in the Republic of Afghanistan belongs to the people. The people exercise national sovereignty through the Loya Jirgah and National Assembly. Equality before the law, as stipulated in article 26 of the Convention, has been provided for in the Constitution and other laws of Afghanistan. For example, article 38 of the Constitution states:

> "Citizens of the Republic of Afghanistan, both men and women, have equal rights and duties in the eyes of the law, irrespective of their national, racial, linguistic, tribal, educational and social status, religious creed, political conviction, occupation, kinship, wealth, and residence. Designation of any illegal privilege and discrimination against the rights and duties of citizens are forbidden."

38. In connection with article 27 of the Covenant, it should be said that article 33 of the Constitution provides as follows:

> "The citizenship of the Republic of Afghanistan is equal and uniform to all citizens ... Every individual having citizenship of the Republic of Afghanistan in accordance with the law shall be called an Afghan."

In addition, article 38 of the Constitution provides that all citizens have equal rights without privilege before the law. The word "citizens" refers to all people without exception, including those in the minority. Therefore, all citizens, both the majority and those in the minority, enjoy equal rights.

The protection of religious and ethnic minorities provided for in article 27 of the Convention has been reflected in various articles of the Constitution of the Republic of Afghanistan.

39. The courts and their authority with respect to the civil and political rights of the people have been envisaged in articles 107 to 116 of the Constitution. The judiciary has been accepted as an independent component of the State. Under the Constitution, judgement in the Republic of Afghanistan shall be delivered only by a court in accordance with the provisions of the law. The courts shall be independent in their judgement and shall submit only to the law. Trial and verdict by courts shall be on the principle of equality of the parties before the law and the court. Under the provisions of the Constitution, trial in the courts of the Republic of Afghanistan shall be held openly. The conditions under which cases will be assessed in secret sessions shall be determined by law and the verdict of the court shall be pronounced openly in all circumstances. Trial and judgement by the courts shall be conducted in the official languages of the country or in the language of the majority of the residents of the place. If a party to the case does not know the languages in which the trial is taking place, he has the right to become acquainted with the materials and documents of the case through an interpreter and the right to address the court in his mother tongue. All the above, and all the fundamental elements which are necessary for the independence of the judiciary and for a just and free trial are guaranteed in the Constitution and the laws related to it.

40. The law on the principles of the civil courts of the Republic of Afghanistan was enforced for the first time in 506 articles. This law has facilitated the right of citizens to appeal to the courts to consider a case and has also established the obligations of the courts during the assessment of civil cases.

41. The New Law on the Organization and Authority of the Courts in the Republic of Afghanistan, pursuant to article 116 of the Constitution, was endorsed by presidential decree in 1991. This law defines the jurisdiction and authority of the courts and organizes them on a nation-wide basis. The judicial system had been changed into a unified one whereby the system of special courts has been abolished. Chambers dealing with internal and external security, as well as military issues, have been incorporated into the system of ordinary courts.

42. In addition, President Najibullah has signed a decree concerning the limitation of the death sentence. In accordance with this decree, the death sentence cannot be applied, except in the following cases: international murder, massacre, explosion of explosive devices accompanied by killing, highway robbery with murder, crimes as a result of which the territory of Afghanistan totally or partially will come under the sovereignty of a foreign State and jeopardizing the territorial integrity and independence of the country. In other cases the death sentence is amended to 20 years' imprisonment. The decree is effective as of 15 January 1992.

Annex

List of legislative documents

1. Constitution of the Republic of Afghanistan
2. The Law on Criminal Procedures
3. Penal Code
4. The Law on the Implementation of Imprisonment in the Prisons
5. The Law on the Organization and Authority of the Courts
6. Civil Law
7. The Law on Military Crimes
8. The Law on Domestic and Foreign Security
9. General Amnesty
10. Private Pardoning under the Decree of the President
11. Amendment to the Law on Criminal Procedures
12. Law to Effect Imprisonment in the Prisons
13. Correction House
14. Detention
15. Passport Law
16. Labour Law Code
17. The Law on the Detection and Investigation of Crimes and supervision of the attorney over the implementation of its legality
18. Law on the Press
19. Citizenship Law
20. Law on Trial Proceedings
21. The New Law on the Organization and Authority of the Courts
22. Amendment to the Law on Detection and Investigation for improving the legal order concerning the temporary deprivation of freedom; 5 articles
23. The rule to legally assist the suffering people; 18 articles.